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No. 96-1268

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United States of America,

Appellee,

v. \*

Robert W. Rash,

Appellant.

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\* Appeal from the United States  
District Court for the

\* District of Nebraska.

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[UNPUBLISHED]

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Submitted: June 14, 1996

Filed: June 26, 1996

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Before MORRIS SHEPPARD ARNOLD and MURPHY, Circuit Judges, and JACKSON,\*  
District Judge.

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PER CURIAM.

Robert W. Rash appeals his sentence after conviction on charges of manufacturing and possessing with intent to manufacture or distribute marijuana in violation of 21 U.S.C. § 841(a)(1). He asserts that the district court<sup>1</sup> wrongly calculated the length of his sentence because it erred in determining the number of marijuana plants for which he ought to be held responsible. The district court specifically credited the testimony of investigating officers that they cut and counted 175 separate marijuana plants

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\*The HONORABLE CAROL E. JACKSON, United States District Judge for the Eastern District of Missouri, sitting by designation.

<sup>1</sup>The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

with separate root systems at the plot of ground that defendant was tending, and this effectively ends the defendant's complaint that some plants that were counted separately might have been branches from a common root system and thus should have been counted as only a single plant. The district court also concluded that the defendant should be held responsible for "volunteer" plants that he did not plant, because he became "directly involved" with these plants, see U.S.S.G. § 1B1.3(a)(1)(A), by exercising dominion and control over all of the marijuana plants growing in the relevant plot of ground. We agree with the district court's construction of the applicable law, and are unable to say that any of its factfinding is clearly erroneous. See, e.g., United States v. Smiley, 997 F.2d 475 (8th Cir. 1993).

Finding no merit in these or in the other contentions advanced by the defendant, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.